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|--|-------------------------------------|-----------------------------|--------------------------------|------|-------------------|
| AMENDMENT TRANSMITTAL LETTER (Small Entity) | | | Docket No. 45054.00.053 | | |
| Applicant(s): Rudolph S. Fortuna | | | | | |
| Serial No. 10/685,608 | Filing Date October 15, 2005 | Examiner M. Le | Group Art Unit 3617 | | |
| Invention: RAILROAD HOPPER CAR DISCHARGE GATE ASSEMBLY | | | | | |
| TO THE COMMISSIONER FOR PATENTS | | | | | |
| Transmitted herewith is an amendment in the above-identified application. | | | | | |
| <input checked="" type="checkbox"/> Small Entity status of this application has been established under 37 CFR 1.27 by a verified statement previously submitted. | | | | | |
| <input type="checkbox"/> A verified statement to establish Small Entity status under 37 FR 1.27 is enclosed. | | | | | |
| The fee has been calculated and is transmitted as shown below. | | | | | |
| CLAIMS AS AMENDED | | | | | |
| | CLAIMS REMAINING AFTER AMENDMENT | HIGHEST # PREV. PAID FOR | NUMBER EXTRA CLAIMS PRESENT | RATE | ADDITIONAL FEE |
| TOTAL CLAIMS | 60 - | 60 - | 0 | x 0 | 0 |
| INDEP. CLAIMS | 6 - | 6 - | 0 | x 0 | 0 |
| Multiple Dependent Claims (check if applicable) <input type="checkbox"/> | | | | | 0 |
| TOTAL ADDITIONAL FEE FOR THIS AMENDMENT | | | | | 0 |
| <input checked="" type="checkbox"/> No additional fee is required for amendment. | | | | | |
| <input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____ | | | | | |
| A duplicate copy of this sheet is enclosed. | | | | | |
| <input type="checkbox"/> A check in the amount of _____ to cover the filing fee is enclosed. | | | | | |
| <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 10-1330 Miner Enterprises, Inc. | | | | | |
| A duplicate copy of this sheet is enclosed. | | | | | |
| <input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16. | | | | | |
| <input checked="" type="checkbox"/> Any patent application processing fees under 37 CFR 1.17. | | | | | |
|  Signature | | | Dated: December 17, 2004 | | |
| <div style="text-align: center;">I certify that this document is being deposited on _____ with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to: Commissioner for Patents, P.O. Box 1450; Alexandria, Virginia 22313-1450</div> <div style="text-align: center; border-top: 1px solid black; margin-top: 10px;">Signature of Person Mailing Correspondence</div> <div style="text-align: center; border-top: 1px solid black; margin-top: 10px;">Typed or Printed Name of Person Mailing Correspondence</div> | | | | | |
| cc: | | | | | |

P115MALL/REV08

Law Office of John W. Harbst
1180 Litchfield Lane, Bartlett, IL 60103

**Law Office of
John W. Harbst**

Fax

To: EXAMINER MARK LE**From:** John W. Harbst

Fax: (703) 746-3721**Pages:** 7 (including this cover page)

Phone: 630-289-4839**Date:** 12/17/04

Re: USSN 10/685,608

TITLE: RAILROAD HOPPER CAR

DISCHARGE GATE ASSEMBLY

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|--|---|----------------------------------|
| In Re Application of: Rudolph S. Fortuna |) | <u>PATENT APPLICATION</u> |
| Serial No.: 10/685,608 |) | Examiner: M. Le |
| Filed: October 15, 2003 |) | Group Art Unit: 3617 |
| For: RAILROAD HOPPER CAR |) | Confirmation No.: 5108 |
| DISCHARGE GATE ASSEMBLY |) | |

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This refers and is responsive to a December 13, 2004 telephone interview with patent Examiner Le regarding the above-identified patent application. During the December 13, 2004 telephone interview, U.S. Patent No. 6,123,030 to J. J. Dohr, *et al.* was discussed.

The gate assembly, which is the subject of the '030 Dohr, *et al.* patent, is illustrated in a Miner Enterprises, Inc. (the Assignee of the '030 Dohr, *et al.* Patent) Drawings No. M-118-24, dated 10 September 1997. Mr. Brian A. Senn (a named co-inventor of U.S. Patent No. 6,123,030) confirms the gate assembly illustrated in Miner Enterprises, Inc. Drawing No. M-118-24, dated 10 September 1997, is the same invention as disclosed and claimed in U.S. Patent No. 6,123,030 to J. J. Dohr, *et al.*

Attached Exhibits "A", "B", "C" and "D" are accurate photocopied reproductions, reduced in size, of Miner Enterprises, Inc. Drawing No. M-118-24. Exhibit "A" shows a fragmentary top plan view of the gate assembly. Exhibit "B" shows a fragmentary side elevational view of the gate assembly shown in Exhibit "A". Exhibit "C" shows a fragmentary front view of the gate assembly shown in Exhibit "A". Exhibit "D" is a photocopied reproduction of the legend associated with Miner Enterprises, Inc. Drawing No. M-118-24.

Notably, Exhibit "B" clearly shows and evidences the gate assembly shown in '030 Dohr, *et al.* patent was intended to have a discharge opening measuring only about 9.25 inches in a longitudinal direction. Exhibit "C" clearly shows and evidences the gate assembly shown in '030 Dohr, *et al.* patent was intended to have a discharge opening measuring only about 12.00 inches in a lateral direction. The intended 9 inch by 12 inch size of the gate assembly illustrated in Miner Enterprises, Inc. Drawing No. M-118-24 is furthermore exemplified in the legend on Drawing No. M-118-24 attached as Exhibit "D".

In re Application Of:

R. S. Fortuna

Serial No.: 10/685,608

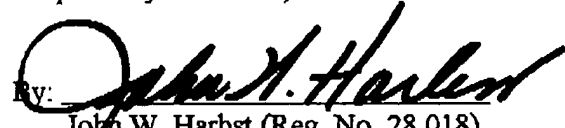
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Applicant respectfully submits the approximately 9 inch by approximately 12 inch size of the discharge opening associated with the gate assembly shown in Miner Enterprises, Inc. Drawing No. M-118-24, which is the subject of U.S. Patent No. 6,123,030 to J. J. Dohr, *et al.*, offers a discharge opening having a cross-sectional area measuring only about 110 square inches. The material differences between the gate assembly of the present invention and the gate structure disclosed in the '030 Dohr, *et al.* patent act against any purported suggestion to combine the two different structures. Moreover, the material plugging problems addressed and solved by the invention disclosed in the above-identified patent application, wherein the discharge opening of the gate assembly measures greater than 1600 square inches, are so different than those addressed by the gate assembly disclosed in the '030 Dohr, *et al.* patent along with the amended claims presented for consideration so differentiate the present invention from the art of record as to warrant an award of a patent on this invention to Applicant.

Reconsideration of the subject application and an early passing of the subject patent application to issue is again respectfully requested. Should patent Examiner Le care to further discuss any aspect of the subject application, Examiner Le is invited to call the undersigned attorney at the below listed number.

Respectfully submitted;


Date: December 17, 2004

By: 
John W. Harbst (Reg. No. 28,018)
One of Applicant's Attorneys

1180 Litchfield Lane
Bartlett, Illinois 60103
(630) 289-4839
(630) 289-0269 (Fax)
JWHPAT@aol.com

CERTIFICATE OF TRANSMISSION BY FACSIMILE

I hereby certify this LETTER and Exhibits "A", "B", "C" and "D" attached thereto are being facsimile transmitted to the United States Patent and Trademark Office (Fax No.: (703) 746-3721 on December 17, 2004.


John W. Harbst